## COLORADO DEPARTMENT OF REVENUE DIVISION OF TAXATION

## October 23, 2013 1:00 P.M.

# Rulemaking workshop for Taxation of Retail Marijuana, Article 28.8 of Title 39

Facilitator: John Vecchiarelli, Director of Taxation, Colorado Deptartment of Revenue

- I. Call to order
- II. Roll call of participants
- III. Introductory remarks
  - a. Overview
    - i. Amendment 64 taxation provisions
    - ii. HB 13-1318 taxation provisions
    - iii. Referendum AA comments
  - b. Timing
    - i. Ten minute breaks will be taken at 2:20 and at 3:50. Business will begin again promptly at 2:30 and 4.
    - ii. Further business will be conducted, if necessary at the November 8<sup>th</sup> workshop.
  - c. Method of conducting business
    - i. The last half-hour of the meeting will be reserved for public comment anyone wishing to make a public comment will be allowed 2 minutes to make their comments after being recognized by the chair.
    - ii. Prior to the public comment period, discussion is limited to the members of the working group.
    - iii. The chair will recognize speakers as they ask to be recognized by raising their hand.
  - d. Business to be conducted
    - i. The overall objectives of the rules are to minimize administrative costs to both the department and businesses while maximizing compliance. Rules should not be designed to ease compliance at the expense of accurate collections nor should they be designed to unduly burden the activities being taxed.
    - ii. The chair will not entertain any discussion of the propriety of the method of taxation or the rates of taxation these discussions are only appropriate in a political context, not a rulemaking context.
    - iii. The chair will not entertain any political grandstanding comments should be made with an aim to develop the most efficient and effective rules.

#### IV. Definitions

- a. Concerns related to statutory definitions
- b. Are additional definitions needed?
- c. Distinction between "bud" and "trim" (e.g., sugarleaf)

#### V. Sales tax

- a. Procedures
  - i. Filing frequency
  - ii. Filing dates
  - iii. Electronic filing
  - iv. Payment of the tax
    - 1. Is electronic payment possible?
  - v. POS systems
    - 1. receipts showing tax paid
    - 2. accounting for tax
- b. Interplay between 2.9% rate and 10% rate
  - i. Other products sold by establishment
  - ii. Medical marijuana separate license
- c. Edibles
  - i. Not food
  - ii. 10% rate on full purchase price of product, regardless of marijuana content
  - iii. 2.9% on purchase

### VI. Excise tax

- a. Procedures
  - i. Filing frequency (Statute requires monthly filing)
  - ii. Filing dates (Statute requires 20<sup>th</sup> of the month following reporting month)
  - iii. Electronic filing
  - iv. Payment of the tax
    - 1. Is electronic payment possible?
  - v. Systems
    - 1. accounting for tax
- b. Who pays the excise tax?
- c. On what products is excise tax due?
  - i. Bud
  - ii. Trim
  - iii. Concentrate?
  - iv. Clones?
- d. At what point is excise tax due
  - i. How to calculate tax for grow operations that also do some concentration?
  - ii. How to handle waste? Is disposal a "transfer"?
- e. Average Market Rate ("AMR")
  - i. Discussion of DOR proposed methodology for initial calculation of an average market rate prior to 1/1/2014
  - ii. Discussion of methodology for future periods
    - 1. Should non-arms length transactions be included in the calculation?

- 2. How to account for "market" part of AMR? Should non-arms length transactions be repriced when factored into the model?
- iii. Problems with AMR when applied to arms' length transactions
  - 1. problems of AMR in the context of integrated grow/MIP/retail operations ability to control pricing between affiliated entities
  - 2. perceived undertaxation of high value products
  - 3. perceived overtaxation of low value products
- iv. Different AMRs for bud and trim?
- v. Different AMRs for arms' length transactions vs. integrated operations transactions?
- vi. Application of AMR to transactions mixing bud and trim
  - 1. Use of the higher AMR for mixed transactions?
  - 2. Require separate transactions for sales of each type of product?
- f. Evidence of payment of tax
  - i. How can retailer be assured that excise tax was paid on product?
  - ii. How can medical marijuana retailer be assured that tax was not paid on product transferred to the medical marijuana facility?
  - iii. What are consequences of untaxed product being owned by retailer or MIP?
    - 1. Is it contraband subject to seizure?
    - 2. Can retailer or MIP pay excise tax?
  - iv. How can department best require evidence of payment of tax?
- g. How to handle payment of excise tax for transfers of product from medical marijuana facilities to retail marijuana facilities?
- h. Excise tax bond
  - i. How can the bonding provisions be most efficiently administered?
  - ii. How should the department handle bond amounts that are too low?